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No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

MARTHA ANN LYNCH PORTER, *et al., Petitioners,*

v.

BERT A. LYNCH, JR., *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Petitioners Martha Ann Lynch Porter, Robert A. Porter, Louis Lynch, and Dora A. Lynch respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on August 3, 1971.

OPINIONS BELOW

The opinions of the United States District Court for the Eastern District of Arkansas and of the Court of Appeals appear in the Appendix hereto. They have not been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on August 3, 1971. This petition for certiorari was filed within ninety days of that date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the District Court abused its discretion in declining to adjudicate a claim for removal of a testamentary trustee, where

(a) the trustee had been appointed by a state court;

(b) a suit then pending in the same state court involved the same parties and the same requested relief; and

(c) only questions of state law were involved.

STATEMENT OF THE CASE

This case presents an important question with respect to the relationship between federal and state courts. The opinion of the Court of Appeals attempts to redefine this relationship in a way that conflicts with traditional teachings of this Court.

The underlying dispute involves the administration of family trusts created by the will of B. A. Lynch, deceased. The plaintiff (respondent here) is Bert A. Lynch, Jr., son of the testator. Defendants (petitioners here) are Dora A. Lynch, widow of the testator, Martha Ann Lynch Porter and Louis Lynch, his other two children, and Robert A. Porter, husband of Martha Ann Lynch Porter. The will, which was admitted to probate on December 16, 1963, by the Probate Court of Mississippi County, Arkansas, Chickasawba District,

created two trusts, one known as the marital-deduction trust and the other as the residuary trust (Complaint, p. 2).[1] As a beneficiary of the residuary trust, respondent has a 14 per cent interest in the assets that were included in his father's estate. He is also a contingent beneficiary of the marital-deduction trust. Petitioners, except for Mr. Porter, beneficially own all remaining property interests in the two trusts (Complaint, pp. 2-3). The will granted to the trustees the same rights over the trust property as the decedent would have if living (Codicil ¶ VII, pp. 2-3, Exhibit B to Complaint).

Respondent Bert A. Lynch, Jr., and petitioner Dora A. Lynch were named trustees of both trusts by the will. After a time, a disagreement arose between them concerning the administration of the trust assets, revolving primarily around differing attitudes towards the trusts' large investments in stock of the Farmers' Bank & Trust Company of Blytheville, Arkansas (of which the testator, Mr. Lynch, was president, and the petitioner Robert A. Porter is now president) and in real estate in downtown Blytheville. The two trustees were unable to resolve the deadlock, and the petitioners Dora A. Lynch and Martha Porter filed a petition with the Chancery Court of Mississippi County, Arkansas, Chickasawba District, sitting in Blytheville, seeking either an increase in the number of trustees or binding instructions from the Chancellor. This proceeding, styled *In the Matter of the Testamentary Trust of B. A. Lynch, Deceased,* No. 17,542-A, was instituted on February 27, 1968. The dispute was resolved, for the time being, on May 17, 1968, by an order of the Chancery Court to which all parties (the same persons

[1] The case was decided by the Court of Appeals on the original record, without uniform pagination.

who are now before this Court) agreed. Respondent resigned as trustee, and petitioner Martha Porter was appointed substitute co-trustee to serve with her mother.

On April 13, 1970, respondent filed the instant suit in the District Court. The two trustees, Mrs. Lynch and Mrs. Porter, Mr. Porter, and Louis Lynch were named defendants. The complaint contained two separate counts. Count I was based upon the District Court's diversity jurisdiction (Complaint, p. 2). It alleged, as noted above, that "[o]n May 17, 1968, defendant Martha Ann Lynch Porter became a successor co-trustee of the Marital Trust and Residuary Trust and from said date has continued to act as such together with one Dora Lynch, the widow of the Decedent" (Complaint, p. 3). Count I went on to allege a breach of trust on account of certain transactions between the trust and Mr. Porter. Damages were demanded in the amount of $49,199.63, plus interest, to be paid to the trusts.

Count II alleged (Complaint, p. 5) that "[t]his Court has jurisdiction over this action in Count II hereof pursuant to this Court's pendent jurisdiction . . . . " Equitable relief was sought in the form of removal of Mrs. Porter as trustee, substitution of respondent in her stead, and attorney's fees. Substitution of respondent as successor trustee was said to be authorized (in the event of Mrs. Porter's ceasing to serve) by the May 17, 1968, Chancery Court order (Complaint, p. 6).

Issue was never joined on the merits of the complaint. No testimony was ever taken, either in court or by way of discovery. A number of motions, briefs, and

other pleadings were filed. On September 30, 1970, petitioner Dora A. Lynch voluntarily paid to the trusts the $49,199.63 demanded by Count I, plus interest at the legal rate, for a total payment of $52,442.92. No liability or wrongdoing was admitted. Petitioners moved to dismiss Count I as moot and asked the District Court not to proceed with the pendent claim stated by Count II. The latter claim (for removal of Mrs. Porter as trustee), they argued, should be determined by the state Chancery Court, which then had pending before it, in the above-cited proceeding, *In the Matter of the Testamentary Trust of B. A. Lynch, Deceased,* No. 17,542-A, a petition by the trustees, filed on June 24, 1970, for approval of their accounts.

The District Court sustained defendants' position by memorandum opinion dated January 27, 1971. The Court held "that count I has become moot and must be dismissed" (p. 7a). The Court went on to say that "even with the dismissal of count I for mootness, it still would have jurisdiction over 'pendent' litigation and, under some circumstances, might justly proceed to determine the issues in such litigation" (p. 7a). In the instant case, however, the Court considered the relevant factors and determined, in the exercise of its discretion, to dismiss Count II, without prejudice. The District Court also indicated that it would have abstained from deciding Count II even if Count I had not dropped out of the case. A claim for removal and replacement of a testamentary trustee, it said, should more appropriately be decided by the state Chancery Court, with continuing supervisory jurisdiction over administration of the trust.

On appeal, the judgment was reversed. The Court of Appeals ordered the District Court to rule on the

claim for removal of a trustee. It held first that the case was not one of pendent jurisdiction. Despite respondent's invocation of that doctrine in the trial court (which, incidentally, respondent's counsel repudiated on appeal), the Court of Appeals held that the District Court should have treated the case as one involving the aggregation of claims to reach the jurisdictional amount, rather than one involving two separate claims, one of which was independently within federal jurisdiction, and the other of which was not. With regard to the question of discretionary abstention in respect of the claim for removal of a trustee, the Court of Appeals agreed "with the district court's apt appraisal and preference to have the state Chancery Court administer the accounting," (p. 16a,) but nevertheless held that the District Court had abused its discretion in deferring to the state court's jurisdiction.

REASONS FOR GRANTING THE WRIT

Whatever the number of courts and whatever the doctrinal rubric under which this case is considered, the ultimate issue comes down to this: the only claim still pending in the federal court asks that a trustee appointed by a state court be removed. Assuming that the federal court has jurisdiction, in the strict sense, to decide this claim, was it an abuse of discretion to decline to proceed to decision? The nature of the claim and the history of this proceeding alike require a negative answer to this question.

The field of federal-state court relationships is indeed a delicate one, and the federal courts have traditionally exercised their discretion to avoid irritations in this area by unnecessary interference with state proceedings. This is so even where the suit is *quasi in rem* and

the federal court's jurisdiction has first attached. As this Court said in *United States* v. *Bank of New York and Trust Co.*, 296 U.S. 463, 480 (1936):

> Even where the district court has acquired jurisdiction prior to state proceedings, the character and adequacy of the latter proceedings in relation to the administration of assets within the state, and the status of those assets, may require in the proper exercise of the discretion of the federal court that jurisdiction should be relinquished in favor of the state administration. *Pennsylvania* v. *Williams*, 294 U.S. 176, 185; *Gordon* v. *Ominsky*, 294 U.S. 186, 188 . . . .

The history of the instant controversy will demonstrate that this principle is peculiarly applicable here. The trusts that are the subject of this suit are both creatures of the Will of B. A. Lynch. That instrument derives all its vitality from an order of the Probate Court of Mississippi County, Arkansas, Chickasawba District, in cause number 4061 (see paragraph 5 of count I of the Complaint). Later, when a dispute arose concerning the administration of the trusts, it was submitted to and settled by the Chancery Court of Mississippi County, Arkansas, Chickasawba District.[2] The order of that Court actually appoints the petitioner Martha Ann Lynch Porter as one of the trustees. Yet, instead of returning to the Chancery Court, which is familiar with the trusts and the parties and is the Court of primary supervision of the trusts, respondent sued in the federal forum. He asked the District Court to remove one of the trustees—the one, as it happens, who was recently appointed by the state court. A greater

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[2] Under Arkansas law, the same person is both Probate and Chancery Judge.

interference with, and assumption of jurisdiction over, a trust primarily under the supervision of another court, could scarcely be conceived. Compare *Urbano* v. *Board of Managers of the New Jersey State Prison,* 415 F. 2d 247, 258 n. 27 (3d Cir. 1969) (dictum referring to the "generally-accepted principle of lack of jurisdiction by the federal courts over the administration of testamentary trusts. . . .") *Martz* v. *Braun,* 266 F. Supp. 134 (E.D. Pa. 1967); 5 Scott, *Trusts* § 570, at p. 3812 (3d ed. 1967).

As Professor Scott remarks at Section 569, page 3811: "Even though a court has jurisdiction, it may decline to exercise it on the ground that the exercise of jurisdiction should be left to another court." As noted, this suit deals with the administration of testamentary trusts, a subject primarily within the competence and expertise of the Probate and Chancery Courts of Arkansas. The Chancery Court has already spent considerable time studying the facts out of which this suit arises. A portion of the stipulation approved by that Court (Exhibit D to the Complaint) is at issue in this suit, and the state court is obviously in a much better position to construe and apply its own decree. Respondent asks the federal courts to remove an officer heretofore appointed by the state court, which appointment he expressly approved. The situation is analogous to other cases in which federal courts, although technically possessing jurisdiction, have abstained in favor of state-court jurisdiction. *See, e.g., Pennsylvania* v. *Williams,* 294 U.S. 176, 185 (1935).

The relief requested by count II, removal of a state-court-appointed trustee, is the type of relief that federal courts, in the exercise of their discretion, have traditionally been reluctant to grant, especially where

the state courts are open and sitting to consider the very claim pressed upon the federal courts. (Here, respondent has filed a claim in the state court seeking removal of Mrs. Porter as trustee). Compare the long line of cases holding that federal courts do not exercise jurisdiction over the administration of decedents' estates, *e.g., Northrup* v. *Browne,* 204 Fed. 224, 230 (8th Cir. 1913). Whether to remove a trustee directly involves the administration of the trusts. Whether this Court, or the Court of Appeals, would as an original matter have abstained is not the issue. The question is whether the District Court abused its discretion, and principle and authority alike make clear that it did not.

With deference, the opinion of the court below fails to meet the issue fairly. It is perfectly true that, in general, the federal courts have a duty to exercise their jurisdiction, even though only state-law questions may arise. It is equally true that, in a number of recognized situations, those courts (including this Court) have abstained from exercising that jurisdiction. The state-court suit now pending was only a continuation of a dispute lodged in the state court long before institution of the instant federal suit. Which case came first, however, is not dispositive. *E.g., United States* v. *Bank of New York and Trust Co.,* 296 U.S. 463, *supra.* The point is that respondent's remaining claim goes directly to the administration of a testamentary trust presently under state-court supervision, rather than concerning merely a personal right to money or property.

Martz v. *Braun,* 266 F. Supp. 134, *supra,* on which the court below inexplicably relied, nicely illustrates this crucial distinction. That was an action by a beneficiary against trustees for money damages. The court

denied motions to dismiss for want of jurisdiction and to abstain from exercising jurisdiction, but in doing so indicated that its action would have been different had plaintiff been "seeking an accounting, or to have the trustees removed, or to have the trust corpus restored," 266 F. Supp. at 138. The suit before it, the court said, unlike a claim for removal of trustees, "does not call for our administration of the trust assets," *ibid.*, and "is far enough removed from direct interference with the trust itself so as to be within our power to adjudicate," *id.* at 139.

This Court should act to correct the encroachment by the court below on the District Court's legitimate exercise of discretion, and to restore the proper balance of jurisdiction and its exercise between state and federal courts.

CONCLUSION

The writ of certiorari should be granted to review the judgment of the United States Court of Appeals for the Eighth Circuit. On plenary consideration, the judgment of the Court of Appeals should be reversed, and the cause remanded to that court with directions to affirm the judgment of the District Court.

Respectfully submitted,

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